

SUE ELLEN WOOLRIDGE
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

ALFRED S. IRVING, JR. (D.C. 417680)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 305-8307

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

SUSAN J. STEELE
Assistant United States Attorney
District of New Jersey
970 Broad Street
Newark, New Jersey 07102

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

Johnson & Johnson, Inc.;
Permacel, Inc.; 3M Company;
Novartis Pharmaceuticals Corporation
Essex Chemical Corporation;
General Motors Corporation;
Chevron Environmental Management
Corporation, for itself and on
behalf of Kewanee Industries,
Inc.; Union Carbide Corporation;
Advanced Environmental Technology
Corporation; Lionetti Oil
Recovery, Inc.; and Fry's Metals,
Inc.,

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. The United States seeks to recover unreimbursed response costs that have been or will be incurred in connection with the release or threatened release of hazardous substances at or from sites known as the Atlantic Resources Corporation and Horseshoe Road Superfund Sites (hereinafter "the Sites") located on Horseshoe Road, in Sayreville, Middlesex County, New Jersey, together with accrued interest. The United States also seeks injunctive relief requiring the Defendants to implement EPA's September 30, 2004 Record of Decision.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this judicial district because the release or threatened release of hazardous substances that gives rise to this claim occurred in

this judicial district.

DEFENDANTS

4. Defendant Johnson & Johnson, Inc. is a corporation incorporated in the State of New Jersey. Defendant Johnson & Johnson, Inc. is a person or a successor to a person, who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

5. Defendant Permacel, Inc., formerly a subsidiary of Johnson & Johnson, Inc., is incorporated in the State of New Jersey. Defendant Permacel, Inc. is a person, who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

6. Defendant 3M Company is a corporation incorporated in the State of Delaware. Defendant 3M Company is a person, who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a)(3).

7. Defendant Novartis Pharmaceuticals Corporation is a subsidiary of Novartis Corporation and is incorporated in the State of Delaware. Defendant Novartis Pharmaceuticals Corporation is a person or a successor to a person, who, by contract, agreement, or otherwise, arranged for disposal or

treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a)(3).

8. Essex Chemical Corporation is a corporation incorporated in the State of New Jersey. Defendant Essex Chemical Corporation is a person, who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

9. Defendant General Motors Corporation is a corporation incorporated in the State of Delaware. Defendant General Motors Corporation is a person, who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a)(3).

10. Defendant Chevron Environmental Management Company, for itself and on behalf of Kewanee Industries, is a corporation incorporated in California. Defendant Chevron Environmental Management Company is a person or a successor to a person, who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

11. Defendant Union Carbide Corporation is a corporation incorporated in the State of New York. Defendant Union Carbide Corporation is a person who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

12. Defendant Advanced Environmental Technology Corporation ("AETC") is a corporation incorporated in the State of New Jersey. Defendant AETC is a person who accepted hazardous substances for transport to the Sites, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. Section 9607(a)(4).

13. Defendant Lionetti Oil Recovery, Inc. is a corporation, incorporated in the State of New Jersey. Defendant Lionetti Oil Recovery, Inc. is a person who accepted hazardous substances for transport to the Sites, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

14. Defendant Fry's Metals, Inc. is a corporation, incorporated in the State of New Jersey, with a principal place of business located in Jersey City, New Jersey. Defendant Fry's Metals, Inc. is a person or a successor to a person who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Sites within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

15. Each of the Defendants is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE SITES

16. On Horseshoe Road in Sayreville, Middlesex County, New Jersey are two Superfund sites, the Atlantic Resources Corporation ("ARC") Site and the Horseshoe Road Site ("Sites"). The Horseshoe Road Site is further broken down into three areas: the Horseshoe Road Drum Dump ("HRDD Site"), the Atlantic Development Corporation facility ("ADC"), and the Sayreville Pesticide Dump ("SPD").

17. The Horseshoe Road Site was proposed for inclusion on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), in 1993, and formally placed on the NPL on September 29, 1995. Sites on the NPL are those that EPA has determined present the greatest danger to public health, welfare, or the environment, and are eligible for long-term remedial action financed with funds from the Hazardous Substance Superfund, commonly referred to as the "Superfund," 42 U.S.C. § 9611. The ARC facility was initially included in the description of the Horseshoe Road Site, but it was removed from the listing after certain of the Defendants challenged the listing. After additional investigations, EPA proposed the ARC facility as a separate NPL site in September 2001. The ARC Site was formally placed on the NPL on September 5, 2002.

18. The Sites are located in a remote industrial area at the end of Horseshoe Road in the City of Sayreville, Middlesex County, New Jersey. The Sites comprise approximately 15 acres and are bordered to the north by the Raritan River and to the east by the Kearny Branch of the Raritan River Railroad.

19. Precious metals recovery operations were conducted on the ARC Site from 1968 until August 1985. The ARC Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

20. The area of the Horseshoe Road Site known as the HRDD Site is a dump area which contains materials allegedly disposed of by companies operating at the adjacent ARC Site. The HRDD Site was used for disposal from approximately 1972 into the early 1980's.

21. The portion of the Horseshoe Road Site known as the ADC Site housed various companies producing roofing materials, sealants, polymers, urethane and epoxy resins, wetting agents, pesticide intermediates, and recycled chlorinated solvents. Operations at the ADC Site ceased in the early 1980's.

22. The SPD portion of the Horseshoe Road Site was allegedly used for disposal by ADC Site companies, and midnight dumping by outside parties. According to historical aerial photography, dumping occurred at SPD from about 1957 through the early 1980's.

23. Because of poor material handling and dumping at both Superfund Sites, soils and groundwater are contaminated with volatile organic compounds, semi-volatile organics, and metals.

24. Contaminants found in subsurface soils and groundwater at the Sites include arsenic, benzo(a)pyrene, cadmium, chlorobenzene, lead, mercury, polychlorinated biphenyls ("PCBs"), tetrachloroethene, toluene, 1,2,4-trichlorobenzene, trichloroethene and zinc. Arsenic, chromium, mercury and PCBs, among other contaminants, have been found at elevated levels in sediments in the marsh and Raritan River.

25. Arsenic, benzo(a)pyrene, cadmium, chlorobenzene, lead, mercury, PCBs, tetrachloroethene, toluene, 1,2,4-trichlorobenzene, trichloroethene and zinc are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. Since 1985, when the New Jersey Department of Environmental Protection ("NJDEP") requested that EPA take the lead agency role in the cleanup of the Sites, EPA has performed several removal actions at the four facilities comprising the Sites. These removal activities, which involved removing more than 3000 drums, cleaning up dioxin and mercury spills, emptying and disposing of materials found in numerous tanks and vats on both Sites, and excavating and disposing of contaminated soils and debris, stabilized the Sites.

27. In the summer of 1997, EPA initiated a remedial investigation and feasibility study ("RI/FS") to characterize the nature and extent of contamination at the Sites. An RI report was released in 1999. The RI evaluated groundwater, surface water, surface soils, subsurface soils, sediments, and building material.

28. EPA is addressing the Sites in separate phases, or operable units ("OU"). In September 1999, a Focused Feasibility study ("FFS") was completed for operable unit 1 ("OU1"), which involved the removal of buildings and structures on the ARC Site and the ADC portion of the Horseshoe Road Site. EPA completed these activities by May 2003. On September 30, 2004, EPA issued a Record of Decision ("ROD") for OU2, which concerns contaminated soils and groundwater at the Sites. The final operable unit, OU3, will address the sediment in the marsh and Raritan River.

STATUTORY BACKGROUND

29. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response actions." 42 U.S.C. §§ 9604(a), 9601(25).

30. Under Section 104(a)(1) of CERCLA:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment

42 U.S.C. § 9604(a)(1).

31. Section 106(a) of CERCLA provides, in addition to the President's authority to undertake response actions under Section 104 of CERCLA, in relevant part, that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

42 U.S.C. § 9606(a).

32. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

33. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in relevant part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

GENERAL ALLEGATIONS

34. Each Site is a "facility" within the meaning of Section 101(9), 42 U.S.C. § 9601(9).

35. There have been and continue to be "releases" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. § 9601(14) and (22), and 42 U.S.C. § 9607(a), into the environment at and from the Sites.

36. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Sites. Such hazardous substances have been found at the Sites.

37. As a result of the release or threatened release of hazardous substances at the Sites, the United States has incurred "response costs" as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. § 9601(25), and 9607(a), for actions taken in response to the release at the Sites and continues to incur response costs related to the Sites.

38. As a result of such response actions, the United States has incurred response costs calculated through October 31, 2004, in the amount of \$3,677,573.09, including interest. These costs have not been reimbursed to the United States.

39. The response costs incurred by the United States in connection with the Sites are not inconsistent with the National Contingency Plan, as set forth in 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

Injunctive Relief Under CERCLA Section 106(a)

40. Paragraphs 1 through 39 inclusive, are realleged and incorporated herein by reference.

41. In accordance with Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Regional Administrator of EPA, Region II, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of the actual and/or threatened releases of hazardous substances at and from the Sites.

42. The remedy selected under the ROD is not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

43. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Defendants are liable to perform certain response actions selected by EPA in order to abate the conditions at the Sites that present or may present an imminent and substantial endangerment to the public health or welfare or the environment.

SECOND CLAIM FOR RELIEF

Cost Recovery Under CERCLA Section 107

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. The releases or threatened releases of hazardous substances at the Sites have caused the United States to incur response costs as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with the Sites. The United States will continue to incur response costs in connection with the Sites in the future.

46. The costs of the response actions taken and to be taken by the United States in connection with the Sites are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

47. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Defendants are jointly and severally liable to the United States for all costs incurred and to be incurred by the United States in connection with the Sites.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully prays that this Court:

1. As to the First Claim for Relief, enter judgment against each of the Defendants, jointly and severally, in favor of the United States, ordering the Defendants to perform certain response actions selected by EPA in order to abate the conditions at the Site;

2. As to the Second Claim for Relief, enter judgment against each of the Defendants, jointly and severally, and in favor of the United States, for all past and future response costs incurred or to be incurred by the United States in connection with the Sites, including enforcement costs and interest;

3. Award the United States its cost of this action; and

4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

SUE ELLEN WOOLRIDGE
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

ALFRED S. IRVING, JR. (D.C. 417680)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
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P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 305-8307

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

SUSAN J. STEELE
Assistant United States Attorney
District of New Jersey
970 Broad Street
Suite 700
Newark, New Jersey 07102

OF COUNSEL:

CLAY MONROE, ESQ.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway
NY, NY 10007